



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/HNA/2023/0051
LON/00BB/HNA/2023/0054**

Property : **79 Station Road, London, E7 0EU**

**Applicant in
LON/00BB/HNA/2023/0051** : **Prime Land Property Limited**

Representative : **Forhad Reza Choudhury**

**Applicant in
LON/00BB/HNA/2023/0054** : **Habibur Rahman**

Representative : **In person**

Respondent : **London Borough of Newham**

Representative : **Nick Ham (Counsel)**

Type of Application : **Appeal against a financial penalty
– Section 249A & Schedule 13A of
the Housing Act 2004**

Tribunal Members : **Judge Robert Latham
Stephen Mason FRICS**

Date and Venue of Hearing : **1 February 2024 at
10 Alfred Place, London WC1E
7LR**

Date of Decision : **13 February 2024**

DECISION

Decision of the Tribunal

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(i) The Tribunal increases the Financial Penalty imposed on Prime Land Property by the Respondent from £7,500 to £10,000 in respect of the offence under section 72(1) of the Housing Act 2004. This sum is to be paid by 1 March 2024.

(ii) The Tribunal makes no order for the refund of the tribunal fees paid by Prime Land Property

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(iii) The Tribunal confirms the Financial Penalty of £2,500 imposed on Habibur Rahman by the Respondent in respect of the offence under section 72(1) of the Housing Act 2004. This sum is to be paid by 1 March 2024.

(iv) The Tribunal makes no order for the refund of the tribunal fees paid by Habibur Rahman.

The Applications

1. The Tribunal is required to determine two appeals against Financial Penalties imposed by the London Borough of Newham (“Newham”) under Section 249A & Schedule 13A of the Housing Act 2004 (“the Act”) in respect of offences of control or management of an unlicensed HMO under section 72 of the Act. The applications relate to a terraced property at 79 Station Road, London, E7 0EU (“the property”).
2. On 12 June 2023, Newham imposed a Financial Penalty of £7,500 on Prime Land Property Limited (“Prime Land”), the offence being committed “on or about 12th November 2022”. Prime Land was liable as “the managing agent” of the property. On 2 March 2023, Newham had served a Notice of Intention proposing to a Financial Penalty in this sum.
3. On 4 July 2023, Prime Land issued its application appealing against this decision. Mr Forhad Reza Choudhury was named as its representative. Prime Land contend that the property had been let to a single household. The property was licensed for this purpose under Newham’s Selective Licensing Scheme. Prime Land had had no knowledge that it was being used as an HMO. Having been informed of the situation, Prime Land could not take immediate action to evict the tenants as they had statutory protection as assured shorthold tenants and could only be evicted in accordance with the law.

4. On 12 June 2023, Newham imposed a Financial Penalty of £2,500 on Mr Habibur Rahman, the offence being committed “on or about 25th November 2022”. Mr Rahman was liable as “the licence holder” of the property. On 2 March 2023, Newham had served a Notice of Intention proposing to a Financial Penalty of £10,000. This had been assessed on the basis that Mr Rahman owned eight other properties in the East End of London. However, in response of representations from Mr Rahman, Newham accepted that he did not own these properties. They had carried out a trawl of properties owned in the name of “Habibur Rahman” and had assumed that they were all owned by this appellant. A more refined search against the date of birth of the relevant owners established that this assumption had been false.
5. On 30 June 2023, Mr Rahman issued his application appealing against this decision. Mr Rahman is the freehold owner of the property, jointly with his wife. He contends that he had appointed Prime Land to manage the property on his behalf and to let it to a single household. He had obtained the appropriate licence for this purpose. When Newham had requested information about the property, his agent had provided this. However, this had been overlooked by Newham. His licence was due to expire on 28 February 2023. As a result of Newham’s intervention, he had decided to let the property as an HMO. On 22 February 2023, he had applied for an HMO licence which was granted on 8 June 2023. The application had been made before Newham had served their Notice of Intention.
6. Pursuant to Directions given by the Tribunal, the parties have filed the Bundles upon which they seek to rely and to which reference is made in this decision:

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(i) Prime Land’s Bundle (111 pages): reference: “A1.____”;

(ii) Newham’s Bundle (237 pages): reference: “R1.____”;

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(iii) Mr Rahman’s Bundle (126 pages): reference: “A2.____”;

(iv) Newham’s Bundle (242 pages): reference: “R2.____”;

The Hearing

7. The appeal was a re-hearing of Newham’s decision to impose the two Financial Penalties. Newham therefore presented their case first. Newham was represented by Mr Nick Ham, Counsel. He provided a Skeleton Argument. We are grateful for the assistance that he provided

8. He adduced evidence from Ms Aurelia Shehi, from Newham's Housing and Environmental Health Team. She had inspected the Property on 25 November and 19 December 2022. We accept her evidence as to what she found without hesitation. This is supported by both her contemporaneous inspection notes and photographs.
9. Newham's officers took witness statements from a number of witnesses who were living in the Property, namely Pradeep Singh (at R1.141-145); Fatima Tuj Johra (R1.150-2); Rashid Md (R1.156-158); and Arfin Islam Nidul (R1.162-4). None of these tenants were called to give evidence. The Directions stated that any witnesses of fact were expected to attend the hearing. In the experience of this tribunal, it is rare that such occupants are willing to attend for this type of appeal. These are quasi-criminal proceedings. Inevitably, the weight that we can give to their statements is less than had they been called and their evidence had been tested.
10. Mr Choudhury appeared on behalf of Prime Land. He is an employee. He gave evidence. We did not find him to be a satisfactory witness. He was uncertain as to how many properties he managed (he suggested only 5 to 7) or how many staff were employed by Prime Land (he suggested only 4). The financial accounts for Prime Land (at R1.215-219) suggested a much larger business employing 24 staff with a profit and loss account of £278,676 for 2022.
11. A more significant concern was his evidence about his knowledge of how the property was being used. He stated that he had visited the property in mid-November 2022 and had seen no evidence that all eight rooms, including the two basement rooms, were being used as bedrooms. Visits by Newham officers on 16 August and 25 November 2022 provided compelling evidence that all the rooms were being used as sleeping accommodation. Mr Choudhury suggested that various beds and mattresses had not been present when he had visited. The Tribunal finds his suggestion that various items of furniture had been removed before his visit and restored shortly thereafter to be incredible. The Tribunal is satisfied that Mr Choudhury was untruthful either about whether he had inspected the property or in his description of what he saw when he did inspect.
12. Mr Rahman is the finance controller of an independent film company. He stated that he had purchased the property in 2006 as investment for retirement. In 2017, he transferred it into joint names with his wife. He lives with his parents at their house in South East London. He is married and has three daughters. He stated that he has a 33% share in three other properties, two of which are in Essex and one is in Newcastle. He spends a lot of time out of London with his filming company.
13. Mr Rahman's case was that he had appointed a reputable firm of managing agents to manage his property. He had been told that it had been let to a single household and had obtained a licence for this purpose.

He had no reason to suspect that all the rooms were being occupied as an HMO. On 24 May 2018, Newham had granted Mr Rahman a licence under their Selective Licencing Scheme. It is apparent that Mr Rahman did not recognise the nature of his obligations as both landlord and licence holder. We are satisfied that he failed to take adequate steps to ensure that Prime Land were managing the property in accordance with the conditions imposed by the licence. We suspect that Mr Rahman may have had greater knowledge than he was willing to admit as to what was happening at the property. However, we are willing to give him the benefit of doubt on this issue.

14. The Act requires this Tribunal to conduct a re-hearing. This has enabled the Tribunal to have regard to facts which were not known to Newham at the time that they imposed the Financial Penalties. One consequence is that the Tribunal has concluded that the offences are more serious than had been assessed by Newham. The Act gives this Tribunal the power to increase any Financial Penalty.

The Law

15. The Housing Act 2004 ("the Act") introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation.
16. Part 2 of the Housing and Planning Act 2016 introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting local housing authorities ("LHAs") to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
17. In *Jepsen v Rakusen* [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, considered the policy of Part 2 of the 2016 Act. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. In the Court of Appeal (reported at [2021] EWCA Civ 1150; [2022] 1 WLR 32), Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the Act conferred tough new powers to address these problems. At [40], he added

that the Act is aimed at “combatting a significant social evil and that the courts should interpret the statute with that in mind”. The policy is to require landlords to comply with their obligations or leave the sector. These policy objectives apply equally to rogue letting agents.

18. Section 61 of the 2004 Act provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that a building or a part of a building meets the “standard test” if:
 - “(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.”
19. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.
20. On 15 June 2017, Newham introduced an Additional Licencing Scheme which applies to all HMOs in the borough excluding the E20 area. This came into force on 1 January 2018 for a period of five years. There are limited exceptions, including those which require a licence under the mandatory scheme.
21. Section 72(1) specifies a number of offences in relation to the licencing of HMOs. The material parts provide (emphasis added):

“(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

.....

(4) In proceedings against a person for an offence under subsection

(1) it is a defence that, at the material time–

...

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1).

....

22. The defence of “reasonable excuse” was considered by the Upper Tribunal in *In Marigold & Ors v Wells*. Martin Rodger KC, the Deputy Chamber President, stated at [40]:

“The offence of having control of or managing an unlicensed HMO contrary to section 72(1) of the 2004 Act is a continuing offence which is committed by the person having control or managing on each day the relevant HMO remains unlicensed. To avoid liability for the offence the person concerned must therefore establish the defence of reasonable excuse for the whole of the period during which it is alleged to have been committed.”

23. In assessing whether a person has established the defence of reasonable excuse for the whole of the period during which the offence is alleged to have been committed, the Upper Tribunal endorsed the approach of the Upper Tribunal, Tax and Chancery Chamber, in *Perrin v HMRC* [2018] UKUT 156 (TCC) at [81]. Applying this to the context of landlord and tenant:

(i) First, establish what facts the landlord asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the landlord or any other person, the landlord’s own experience or relevant attributes, the situation of the landlord at any relevant time and any other relevant external facts).

(ii) Second, decide which of those facts are proven.

(iii) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the landlord and the situation in which the landlord found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was what the landlord did (or omitted to do or believed) objectively reasonable for this landlord in those circumstances?”

24. Section 263 provides:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

25. It is to be noted that there may be more than one person who may commit an offence under section 72 as having control or managing an HMO. A LHA also has a discretion as to who is the appropriate person to hold any licence. In such circumstances, it will be for the LHA to determine who is

the most appropriate person to hold a licence. This will normally be the landlord or the property agent.

26. By section 72(6), a person who commits an offence under section 72(1) is liable on summary conviction to an unlimited fine. Alternatively, by section 249A, a LHA may impose a Financial Penalty of up to £30,000:

“The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person’s conduct amounts to a relevant housing offence in respect of premises in England. This includes ... offences under section 72 (licencing of HMOs)”.

27. Schedule 13A deals with the procedure for imposing Financial Penalties and appeals against them. Paragraph 10 of Schedule 13A provides for a right of appeal:

“(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

- (a) is to be a re-hearing of the local housing authority's decision, but
- (b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.”

28. Paragraph 12 requires a LHA to have regard to any guidance given by the Secretary of State about the exercise of its functions under s.249A. Newham provided the Tribunal with the current guidance issued by the Secretary of State, namely “Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities” (April 2018). LHAs are expected to develop and document their own policy on when to prosecute and when to issue Financial Penalties and should decide which option they wish to pursue on a case-by-case basis in line with that policy.

29. The Tribunal highlights the following passages from the Guidance:
- (i) The amount of the penalty is to be determined by the LHA in each case, having regard to the Guidance ([1.11]);
 - (ii) LHAs are expected to develop and document their own policies about when to prosecute, when to penalise and how to determine the appropriate level of a penalty ([3.3], [3.5]);
 - (iii) Higher penalties are required when the recipient's actions are deliberate, or if they ought to have known that they were in breach of their legal obligations ([3.5(b)]); and
 - (iv) It is important that the penalty is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities ([3.5(d)]).
30. In *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC), the Upper Tribunal confirmed that when dealing with an appeal against a Financial Penalty, a FTT should start with the LHA's policy and apply it as if "standing in the shoes of the local authority". Moreover, although the appeal is conducted as a re-hearing, the Tribunal must consider the authority's original decision (i) to impose the Financial Penalty and (ii) as to the level of the penalty set under the Policy. The Tribunal must afford those decisions "considerable weight" and "great respect". However, in the subsequent decision of *Gateshead Borough Council v City Estates Holdings Limited* [2023] UKUT 35 (LC), the Upper Tribunal emphasised that a FTT must make its own decision. Its role is not merely to review the decision made by the LHA.

Newham's Policy

31. Newham reviewed their Enforcement Policy in September 2021 (at R1.26-39). The Policy outlines the Council's approach to fixing the amount of any Financial Penalty for offences committed in its area. Under the policy, an offence may fall into one of eight bands which reflect the gravity of the offence in question, for which the corresponding penalty may be adjusted to account for mitigating and aggravating circumstances.
32. Officers are required to use a matrix to determine the Financial Penalty that should be imposed. The matrix is intended to secure consistency. However, it precludes any element of discretion. Thus, the policy states at p.13:

"Consequently the officer using the matrix will at no point be setting the penalty amount themselves as it is automatically calculated by the matrix, dependent on their assessment and resultant scores in each of the four rows."

33. The matrix requires the officer to score the case having regard to four factors: 1. Deterrence and Prevention; 2. Removal of Financial Incentive; 3. Offence and History; and 4. Harm to Tenant. Under each of these headings, the officer may give a score of 1, 5, 10, 15 or 20 and provides guidance of the score that should be assessed. The scores are then totalled, subject to an additional weighting being added to Factor 4 (Harm to Tenant), the score being doubled. The lowest score could be five (one for each factor, factor 4 being doubled), resulting in a fine of £1,000. The maximum fine of £30,000 is imposed where the score ranges from 81 to 100.

The Background

34. 79 Station Road is a terraced property. On the ground floor there are two living rooms, a kitchen, a bathroom/toilet and a second toilet. As originally constructed, these two rooms would have been used as a living room and a dining room. On the first floor there are three bedrooms. There is an attic room with an additional bedroom. There is also a basement with two rooms. These rooms have no natural light or ventilation and are only suitable for storage.
35. Officers from Newham, inspected the property on four occasions. On 16 August 2022, Ms Khadija Uddin attended. She was admitted by Ms Kanij Fatima who had said that she had moved in one year previously. She stated that there were also a couple and four males. More people were residing in the basement. None were related to each other. Ms Uddin took notes of the disrepair (at R1.105).
36. On 25 November and 19 December 2022 Ms Shehi inspected the property with other officers. On 6 December Ms Sylwia Olejnik-Antkowiak and Ms Alexandra Hall inspected the property. The officers took witness statements from some of the tenants. Other tenants were reluctant to make statements. The officers made inspection notes and took a number of photographs. The kitchen, bathroom and toilet were all dirty. The bath had mouldy silicon and its side was rusty. The officers were concerned about the lack of smoke detectors and inadequate fire precautions.
37. These inspections established that all eight rooms were being used as sleeping accommodation by persons whom did not form a single household:
- (i) The attic room: On 25 November, Prandip Singh gave a statement (at R1.141-145). He stated that he had been there for one month and paid £300 rent in cash to “Farukh”. He was unrelated to the 7 other tenants in the property and provided various names “Alex, Andrew, Krish and Fathima”. On 25 November, Ms Shehi observed two single mattresses and personal belongings in this room. On 19 December, she observed a single mattress and personal belongings.
- (ii) The three first floor bedrooms: On 6 December, Fatima Tuj Johra gave a statement (at R1.150-152). She stated that she had been the tenant of the

first floor front room which she shared with her husband, Rony Gosh. She had been there for six months. She paid £650 pm by bank transfer to “Asif Iqbal”. The couple were unrelated to the other tenants. More than ten people were occupying the building. On 25 November, Ms Shehi had been unable to gain access to these rooms as they were all locked. On 19 December, she gained access to the front room and observed a double bed and personal belongings.

(iii) The two ground floor living rooms: On 25 November, Ms Shehi had met Mr Nalla and his brother in the front room. She observed a double bed and personal belongings. There was a lock to their door. Ms Shehi was unable to gain access to the rear room which was locked. On 19 December, Ms Shehi gained access to the rear room and observed a double bed and personal belongings.

(iv) The two basement rooms: On 6 December, Rashid Md gave a statement (at R1.156-158). He had occupied one of the basement rooms for 7 to 8 months paying £200 pm to Mr Asif. He stated that he shared the room. Arfin Islam Nidul also gave a statement (at R1.162-164). He had moved in some 2 to 3 days previously and shared with Mr Rashid. He paid £200 pm to Mr Asif Mohammed. These tenants were unrelated to each other or to the other tenants. On 25 November, Ms Shehi had seen two single beds in one room and a double bed in the other. She also observed personal belongings. These observations are confirmed by photos.

38. The issue for this Tribunal is the extent to which Prime Land (as managing agent) and Mr Rahman (as freeholder/landlord/licence holder) were responsible for the property being occupied in this manner. The Tribunal were particularly concerned that the two basement rooms were being used as bedrooms as these rooms had no natural light or ventilation and no adequate means of escape.
39. On 16 April 2016, Mr Rahman had entered into a management agreement with Prime Land (at A2.15-18). This was a guaranteed rental agreement, whereby Prime Land agreed to pay Mr Rahman £1,700 pm, regardless as to whether any tenants were in occupation or paying rent. The agreement was for an initial period of 36 months and was thereafter determinable by 90 clear days’ notice. By Clause 5.8, Mr Rahman agreed to provide any required licence for residential letting. Mr Rahman stated that in November, he had increased the guaranteed rent to £1,850 pm. This type of guaranteed rent Agreement gives the management agent an incentive to maximise the rent that they can generate from the property.
40. On 24 May 2018, Newham granted Mr Rahman a licence under their Selective Licencing Scheme for a period of five years expiring on 28 February 2023 (at R1.85-100). Mr Rezaul Karim Khan, a director of Prime Land, was named as the managing agent. The property was licenced for occupation of a maximum of 11 people living as one household, regardless of age. Thus, Newham contemplated that up to 11 adults might share one bathroom. It was a condition that a copy of the licence should be displayed in a prominent position in the property at all times. A maximum number

of occupants was specified for each room. There was no suggestion that the basement rooms could be used for sleeping accommodation.

41. The licence imposed a number of responsibilities on Mr Rahman as licence holder. He was required (i) to obtain references in respect of any prospective tenant; (ii) to carry out adequate checks and obtain satisfactory proof that any occupants belonged to a single household; (iii) to ensure that the property was inspected at least every six months; and (iv) to retain records of such inspections for the duration of the licence.
42. Mr Rahman stated that he had inspected the property in March 2022 when a neighbour, with whom he was in regular contact, wanted to discuss a party wall issue. The property was empty at this time. He had next inspected the property in August 2023, when the tenants had left and repairs were required.
43. On 7 July 2022 (at R1.101-104), Newham sent both Mr Rahman and Mr Rezaul Khan (Prime Land) letters stating that they would be carrying out a “Licence Compliance Inspection” no sooner than 28 days of the date of the letter. Newham would be seeking to ensure that the information provided in the Property Licence was correct and that the conditions of the licence were being Adhered to.
44. On 1 August 2022, Mr Choudhury stated that Prime Land had granted an assured shorthold tenancy of the property to Md Baki Ullah Faruq and Din Islam Rana for a term of 12 months at a rent of £2,000 pm. The tenancy agreement is at A1.7-16. The property was let unfurnished. Mr Rahman was named as the landlord. However, Mr Choudhury signed the agreement on his behalf. Clause 3 of the tenancy agreement stated that the property was subject a Selective Licence from Newham and that the tenancy was let to a single family with a maximum of 7 persons. Prime Land have provided copies of the passports for both tenants (at A1.48-49). Mr Choudhury stated that the two tenants were cousins and that he was told that they would be occupying the property with members of their family.
45. On 16 August 2022, Ms Khadija carried out her inspection and satisfied herself that the property was being occupied as an HMO. The Tribunal notes that Ms Fatima’s account that she had been living at the property for one year, is not consistent with the above grant of the AST on 1 August 2022.
46. On 30 September 2022, Newham sent a “Notification of Incorrect Licence Type” letter to both Mr Rahman and Prime Land (at R1.106-110). Newham stated that it appeared that the property was being occupied by more than one household. The Applicants were required to submit an application for an HMO licence or take immediate steps to reinstate it as a single family dwelling by 28 October. They were also asked to provide some 11 different documents

47. Newham state that they received no response to this letter. On 4 November, they therefore sent a second letter (at R1.115-124).
48. Mr Rahman stated that upon receipt of the first letter, he passed it to Prime Land. On 26 October (at A2.35-56), Mr Choudhury emailed the information that had been requested to Newham at propertylicensing@newham.gov.uk, the email address specified in Newham's letter. Mr Rahman passed the second letter to Prime Land and Mr Choudhury sent a second email providing the information that had been requested on 7 November (at A2.62). This included a copy of the tenancy agreement and an email exchange with the two tenants (at A2.49). On 24 October, Mr Choudhury had emailed Baki Ullah Faruk (sic) and Ashikur Rahman (sic) asking for confirmation that they were occupying the property as a single household. On 25 October, Mr Ashikur Rahman had responded stating "I confirm that we are living 1 family in the house".
49. Ms Shehi was unable to explain why these two emails had not been received by Newham. They may have gone into a spam folder. It is possible that they may have been deleted. It was only at a later stage that Newham accepted that these emails had been received.
50. Mr Ham suggested that it was immaterial to the appeal that Newham had not received these emails. The Tribunal does not accept this. Had Newham received a copy of these emails, they could have made further inquiries about the involvement of Md Baki Ullah Faruq and Din Islam Rana. Were they occupying the property? Were they subletting the property to the other occupants? Further, a number of the documents which were sent to Newham were not consistent with the Applicants' account. The tenancy deposit certificate (at A2.50) refers to a tenancy starting on 1 June 2020. A "Mid Term Inventory" dated 8 August 2022 (at A2.51-54) is not consistent with the grant of a new tenancy on 1 August 2022.
51. On 25 November, 6 December and 19 December 2022, Newham carried out their further inspections. On 19 January 2023 (at A2.63-69), Newham wrote to both Appellants notifying them of these inspections and informing them that Newham was proposing to serve a Prohibition Order in respect of the basement rooms. Newham sent a second letter notifying them that an Improvement Notice would also be served requiring works to be executed.
52. On 25 January 2023 (at R1.199-200), Mr Choudhury responded repeating his contention that the property was being let as a single household. The basement rooms were only to be used for storage. He disputed the works that were required given that it was not an HMO. On 28 February, Newham served a Prohibition Order in respect of the use of the two basement rooms.
53. Mr Rahman stated that as the Selective Licence was due to expire on 28 February 2023, he decided to apply for a HMO licence, rather than renew

the Selective Licence. On 22 February 2023, Mr Rahman applied for an HMO licence. On 8 June 2023, Newham granted Mr Rahman an HMO licence with Prime Land specified as the managing agent (at A1.82-86). The property was licenced for a period of five years from 22 February 2023 for a maximum of 7 people living in 6 households. It is apparent that the Applicants had carried out sufficient works to satisfy Newham that it was appropriate for a licence to be granted.

The Appeal by Prime Land

54. On 2 March 2023 (at R1.222-226), Newham served a Notice of Intention proposing to impose a Financial Penalty of £7,500 on Prime Land. Newham alleged that the offence of failing to licence an HMO had been committed under section 72(1) of the Act. Prime Land was liable as “managing agent of the property”. The offence had been committed “on or about 25th November 2022”. Newham set out the history of their involvement and contended that Prime Land had not responded to the letter of 30 September.

55. Newham provided a copy of the matrix (at R1.227) upon which the Financial Penalty had been assessed:

(i) Deterrence and Prevention: The lowest score of 1 was assessed on the ground that Ms Shehi was satisfied the Financial Penalty would deter any repeat offending.

(ii) Removal of Financial Incentive: A score of 15 was allocated on the basis that Prime Land was a medium portfolio agent with medium asset value. This was based on the “Filletted Accounts” to 31 July 2022 (at R1.215-219). These had been obtained from Companies House.

(iii) Offence and History: The lowest score of 1 was assessed as there had been no previous enforcement history. Ms Shehi had checked this against Newham’s rogue landlord database.

(iv) Harm to Tenant: The lowest score of 1 was awarded as no vulnerable occupants were present.

The total score assessed by Newham was 18 (1 + 15 + 1 + 2; the score for “Harm to Tenant” being doubled)). The Financial Penalty for a score in the range of 16 to 20 is £7,500.

56. On 6 March (at R1.228-229), Mr Choudhury made representations in response to the notice. He asserted, correctly, that he had responded to the letters of 30 September and 4 November 2022. He stated that the property had been let to a single household. Prime Land was not aware that the basement rooms were being used for sleeping accommodation. They had carried out their routine inspection. They had expected Newham

to respond to their letters and to provide their evidence that the property was being occupied as an HMO. In the absence of such evidence, they had been unable to take action against their tenants. The landlord had now applied for an HMO licence.

57. On 17 March (at R1.230-231), Ms Shehi responded to these representations. She noted that even had Newham been provided with the documents, it would not have impacted upon the offence under section 72(1) of the Act. Newham accepted that an application for an HMO licence had been received, but works would be required before a licence could be granted.
58. 12 June (at R1.232-237), Newham served their Final Notice confirming the Penalty of £7,500, the offence being committed “on or about 12th November 2022”. Prime Land were liable as “the managing agent” of the property. Ms Shehi accepted that the disputed documents had been submitted, but this did not affect the penalty that had been imposed.
59. On 4 July 2023, Prime Land issued its application appealing against this decision (at A1.74-81). Prime Land contend that the property had been let to a single household. The property was licenced for this purpose under Newham’s Selective Licencing Scheme. Prime Land had had no knowledge that it was being used as an HMO. Having been informed of the situation, Prime Land could not take immediate action to evict the tenants as they had statutory protection as assured shorthold tenants and could only be evicted in accordance with the law.

The Tribunal’s Determination in respect of Prime Land

60. The Tribunal is satisfied beyond reasonable doubt that Prime Land committed the offence of control of an unlicensed HMO contrary to section 72(2) of the Act during the period 16 August and 19 December 2022. Prime Land was the “person having control” in relation to the premises in that it received the rack rent from the tenants. We are satisfied that during this period, the premises were an HMO for which a licence was required. All eight rooms were being occupied by persons who were not related. The first floor front room was occupied by both Ms Fatima Johra and her husband. For at least part of this period, one of the basement rooms was occupied by both Mr Rashid Md and Mr Arfin Nidul who were unrelated. All the tenants paid rent and shared the kitchen, the bathroom/toilet and the second toilet.
61. Prime Land has failed to satisfy us that it has a defence of reasonable excuse for having control of an HMO without a licence. We do not accept that Mr Choudhury was unaware that the property was being occupied in this way. We are unable to accept his evidence. We find that Prime Land received rent of at least £2,000 pm, possibly from Md Baki Ullah Faruq and Din Islam Rana. It is not necessary for this Tribunal to determine whether Prime Home received additional rent from the other occupants. It

is possible that this rent was both received and retained by Mr Faruq and Mr Rana. However, it is clear to this Tribunal that anyone who inspected the property would have been aware that all eight rooms were being used as sleeping accommodation.

62. We turn to the appeal against the financial penalty. Our starting point is Newham's matrix:

(i) Deterrence and Prevention: The lowest score of 1 was assessed on the ground that the Financial Penalty would deter any repeat offending. We see no reason to interfere with this.

(ii) Removal of Financial Incentive: A score of 15 was allocated on the basis that Prime Land was a medium portfolio agent with medium asset value. Again, we see no reason to interfere with this. We are satisfied that Mr Choudhury sought to down play the size of the firm.

(iii) Offence and History: The lowest score of 1 was assessed as there had been no previous enforcement history. We see no reason to interfere with this.

(iv) Harm to Tenant: The lowest score of 1 was awarded as no vulnerable occupants were present. The Tribunal found it difficult to reconcile this assessment with the following statement which Ms Shehi had included in her assessment: "There was a high risk of harm to the tenants occupying a basement because they only had one means of escape via the flight of stairs. There was no window to the basements". Ms Shehi sought to justify her score of 1 on the basis that the Applicants had responded to the threat of a Prohibition Order by ensuring that the basement rooms were only used for storage. However, this was reflected in the assessment of "Deterrence and Prevention". We are rather considering the potential harm to the tenants during the period that the offence was proved, namely between 16 August and 19 December 2022. These basement rooms were wholly unsuitable for sleeping accommodation. Whilst there were no vulnerable tenants, the risk to health from no ventilation or natural light was significant. There was also a significant risk of death had there been a fire. A "moderate risk to health or of harm" would have merited a score of 10, whilst a "high risk" would have scored 15, both of which would have been doubled to reach the final score.

63. A "moderate risk" would have resulted in a total assessment of 37 (1 + 15 + 1 + 20) and a Financial Penalty of £15,000, whilst a "high risk" a total of 47 (1 + 15 + 1 + 30) and £20,000. We are satisfied that the Financial Penalty imposed by Newham was too low.

64. However, we have concluded that we should only make a modest increase to £10,000. We have regard to the following factors: (i) whilst this Tribunal has a discretion to increase any financial Penalty, we should only

do so sparingly; (ii) we are dealing with a litigant in person who brought the appeal partly because Newham had failed to respond to their correspondence; and (iii) we are not satisfied that Prime Land agreed to the letting of the basement rooms; their fault rather lies in their failure to take effective action when they became aware of it. Had Newham received the information provided on 26 October and 7 November 2022, it is probable that they would have carried out further inquiries as to the involvement of Md Baki Ullah Faruq and Din Islam Rana. It is for Newham, as prosecutor to prove their case.

The Appeal by Habibur Rahman

65. On 2 March 2023 (at R2.226-229), Newham had served a Notice of Intention proposing to a Financial Penalty of £10,000. Newham alleged that the offence of failing to licence an HMO had been committed under section 72(1) of the Act. Mr Rahman was liable as “the licence holder of the property”. The offence had been committed “on or about 25th November 2022”. Newham set out the history of their involvement and contended that Mr Rahman had not responded to the letter of 30 September.

66. Newham provided a copy of the matrix (at R2.230) upon which the Financial Penalty had been assessed:

(i) Deterrence and Prevention: The lowest score of 1 was assessed on the ground that Ms Shehi was satisfied the Financial Penalty would deter any repeat offending.

(ii) Removal of Financial Incentive: A score of 20 was allocated on the basis that Mr Rahman owned eight other properties in the East End of London. He was therefore a large portfolio landlord, owning over five properties.

(iii) Offence and History: The lowest score of 1 was assessed as there had been no previous enforcement history.

(iv) Harm to Tenant: The lowest score of 1 was awarded as no vulnerable occupants were present.

The total score assessed by Newham was 24 (1 + 20 + 1 + 2 (the score for “Harm to Tenant” being doubled)). The Financial Penalty for a score in the range of 21 to 30 is £10,000.

67. On 7 March (at R2.231-233), Mr Rahman made representations in response to the notice. He asserted, correctly, that Prime Land had responded to the letters of 30 September and 4 November 2022. He stated that the property had been let to a single household. Neither he, nor his managing agent had been aware that the basement rooms were being used for sleeping accommodation. Prime Land had requested details of the

evidence that the basement rooms were being used as sleeping accommodation. Newham had failed to provide this. He disputed that he owned the eight properties. Newham had ignored the correspondence from his agent and falsely alleged that he had failed to respond to their correspondence.

68. On 17 March (at R2.232-236), Ms Shehi responded to these representations. She noted that even had Newham been provided with the documents, it would not have impacted upon the offence under section 72(1) of the Act. Newham accepted that an application for an HMO licence had been received, but works were required before a licence could be granted. She recognised that an error had been made in assessing his means. She therefore provided a new matrix reducing the score for “Removal of Financial Incentive” from 20 to 5, reflecting “little asset value”. Further searches had confirmed that he owned the premises and one other property. This reduced his score to 9. The Financial Penalty for a score in the range of 6 to 10 is £2,500.
69. 12 June (at R2.237-242), Newham served their Final Notice confirming the Penalty of £2,500, the offence being committed “on or about 25th November 2022”. Mr Rahman was liable as “the licence holder of the property”. Ms Shehi accepted that the disputed documents had been submitted, but this did not affect the penalty that had been imposed. She accepted that Mr Rahman only owned two properties and the Financial Penalty had been reduced accordingly.
70. On 30 June 2023 (at A2.1-9), Mr Rahman issued his application appealing against this decision. Mr Rahman is the freehold owner of the property, jointly with his wife. He contends that he had appointed Prime Land to manage the property on his behalf and to let it to a single household. He had obtained the appropriate licence for this purpose. When Newham had requested information about the property, his agent had provided this. However, this had been overlooked by Newham. His licence was due to expire on 28 February 2023. As a result of Newham’s intervention, he had decided to let the property as an HMO. On 22 February 2023, he had applied for an HMO licence. This was before Newham had served their Notice of Intention.

The Tribunal’s Determination in respect of Habibur Rahman

71. The Tribunal is satisfied beyond reasonable doubt that Mr Rahman committed the offence of managing an unlicensed HMO contrary to section 72(2) of the Act during the period 16 August and 19 December 2022. Mr Rahman was the “person managing” the property being the owner of the premises who received rent through his managing agent. We are satisfied that during this period, the premises were an HMO which required a licence. Eight rooms were being occupied by persons who were not related. The first floor front room was occupied by both Ms Fatima Johra and her husband. For at least part of this period, one of the basement rooms was

occupied by both Mr Rashid Md and Mr Arfin Nidul who were unrelated. All the tenants paid rent and shared the kitchen, the bathroom/toilet and the second toilet.

72. Mr Rahman has failed to satisfy us that it has a defence of reasonable excuse of managing an unlicensed HMO. We accept that he may have been unaware that the basement rooms were being used for sleeping accommodation. However, we are satisfied that Mr Rahman did not recognise the nature of his obligations as both landlord and licence holder. We are satisfied that he failed to take adequate steps to ensure that Prime Land were managing the property in accordance with the conditions imposed by the Selective Licence. Further, he failed to take adequate steps when Newham alerted him on 30 September 2022 (at R1.106) that the property might be being used as an HMO.
73. Newham have imposed a Financial Penalty of £2,500 at the lowest end of the range. We suspect that Mr Rahman may have had greater knowledge than he was willing to accept as to how the property was being used. However, these are criminal proceedings and we are willing to give him the benefit of the doubt on this issue. We are satisfied that the Financial Penalty is manifestly reasonable.
74. Had Newham received the information provided by Prime Land on 26 October and 7 November 2022, it would not have resulted in a lower Financial Penalty. It might rather have caused Newham to make further inquiries as to the state of Mr Rahman's knowledge as to how the property was being used. We are far from satisfied that the property was empty in March 2022, when he stated that he had inspected the property.

Refund of Tribunal Fees

75. In the light of the decisions that we have reached, it would not be appropriate to make any order for the refund of the tribunal fees paid by the Applicants. Both appeals have failed.

Judge Robert Latham
13 February 2024

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.